Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

Kurt Charles Garrison,
Plaintiff – Appellant

vs.

City of Wichita Falls, Texas

David Bynum, Police Officer, Individually and in his Official Capacity as Police Officer for the City of Wichita Falls

Jack Schlieper, Chief of Police, Individually and in his Official Capacity as Chief of Police for the City of Wichita Falls
Defendants – Appellees

PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT ARTICLE III COURT OF APPEALS OF THE UNITED STATES OF AMERICA

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61pp

QUESTIONS PRESENTED FOR REVIEW

1. Do National Constitutional protections secured under the Bill of Rights made mandatory on the State of Texas and defendants under the Fourteenth Amendment apply to criminal prosecutions for alleged traffic offenses?

2. May Judges of the U.S. Courts exercise unjustified discretion in cases filed ***at law*** in the National Courts?

3. May Circuit Judges lawfully apply sanctions and thereby bar a litigant from filing documents in the U.S. Appellate Court upon the premise of "lack of respect … evinced in the motion to recuse … Judges of this Court" when same motions are well stated and filed in the pursuit of justice?

LIST OF PARTIES

Kurt Garrison
Assignee and Plaintiff - Appellant
Debra Donoghue,
Assignor

City Of Wichita Falls;
David Bynum, Police Officer for the City of Wichita Falls;
Jack Schlieper, Chief of Police for the City of Wichita Falls;
Defendant – Appellees

Larry A. Gillen, Judge for the City of Wichita Falls;
Lee Pierson, Deputy Assistant City Attorney for the City of Wichita Falls;
Greg Humbach, City Attorney for the City of Wichita Falls;
Petitioned by Garrison for joinder

Mark T. Price, Assistant City Attorney for the City of Wichita Falls
Council of Record in the Appellate Court proceedings

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PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT ARTICLE III COURT OF APPEALS OF THE UNITED STATES OF AMERICA

Preliminary Statement

Kurt Garrison (hereinafter "Garrison", "Petitioner" or "plaintiff") petitions this Honorable Court for issuance of a Writ of Certiorari to review the opinion of the United States Court of Appeals for the Fifth Circuit in case no. 99-10210 entered on December 7, 1999 affirming Order and Judgment of the District Court case no. 7-97CV-213-X entered on April 16, 1999 dismissing petitioner's complaint with prejudice.

JURISDICTION

Instant petition for writ of certiorari establishes the jurisdiction of Supreme Court of the United States under the First, Fourth, Fifth, Sixth, Seventh, and Fourteenth Amendments of the National Constitution; the Civil Rights Act of 1871, 17 Stat. 13, codified as 42 USC § 1983; Article III, section 1 and Article III, section 2 of the Constitution of the United States which declares "The judicial Power shall extend to all Cases, in Law ..."; and 28 USC § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of the United States (National Constitution)

"The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, ..." Art. III, section 1.

"The judicial Power shall extend to all Cases, in Law ... , arising under this Constitution, [and] the Laws of the United States, ..." Art. III, section 2

Amendments To The National Constitution Including Bill Of Rights

First Amendment. "Congress shall make no law ... prohibiting ... the right of the people ... to petition the Government for a redress of grievances."

Fourth Amendment. "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation,"

Fifth Amendment. "[N]or shall any person be subject to the same offense to be twice put in jeopardy of life or limb; ... nor be deprived of life, liberty, or property, without due process of law;"

Sixth Amendment. "In all criminal prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of the accusation; ..."

Seventh Amendment. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, ...".

Fourteenth Amendment. "... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Acts of Congress and Statutes of the United States

Courts of Appeals; Certiorari; Certified Questions. 28 U.S.C. § 1254. Case in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to a any civil or criminal case, before or after rendition of judgment or decree;"

Civil Rights and Elective Franchise. 28 U.S.C. § 1343. "(a) The district courts hall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

Civil Action for Declaration of Rights. [The Civil Rights Act of 1871], codified as 42 USC § 1983 "Every person who, under color of any statute, ordinance, regulation, custom or usage, of an State or Territory, subjects, or causes to be subjected, any citizen of the United states or other person (Texas State Citizen) within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress;"

Depriving State Citizens of rights or privileges. 42 U.S.C. § 1985.(3). "If two or more persons in any State ... conspire, ... for the purpose of depriving, either directly or indirectly, any person (State Citizen), ... equal protection of the laws, or of equal privileges and immunities under the laws, ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause ... done, any act in furtherance of the object of such conspiracy, whereby another (State Citizen) is injured in his person or property, or deprived of having and exercising any right or privilege of a (State Citizen), the State Citizen so injured or deprived may have an action for ... recovery

of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Action for neglect to prevent conspiracy. 42 U.S.C. § 1986. "Every person ... , having knowledge that ... wrongs conspired to be done, and mentioned in the preceding section (42 USCS § 1985), are about to be committed, and having power to prevent or aid in preventing ... commission of ... same, neglects or refuses ... to ...act...shall be liable to ... party injured, or his legal representatives, for all damages caused by such ... act, which such person by reasonable diligence could have prevented; and such damages ... be recovered in ... action on the case; and any number of persons guilty of such ... neglect or refusal ... be joined as defendants in ... action,..."

Texas Constitution

Rights of Accused in Criminal Prosecutions. Texas Constitution, Art. 1, § 10. "In all criminal prosecutions the accused shall have ... the right to demand the nature and cause of the accusation against him, and to have a copy thereof.

Texas Code Of Criminal Procedure And Evidence

Jeopardy. Art. 1.10 CCP. No person for the same offense shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offence, after a verdict of not guilty in a court of competent jurisdiction.

Acquittal a Bar. Art. 1.11 CCP. An acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been;"

Complaint. Art. 45.01 CCP. "Proceedings in a municipal Court ***shall*** be commenced by complaint, which shall begin: 'In the name and by authority of the State of Texas'; and shall conclude: 'Against the peace and dignity of the State'; .."

Service of Process. Art. 45.04 § (3) CCP "A defendant is entitled to at least one day's notice of any complaint against him, if such time is demanded

Hearsay Rule 802. Texas Rule of Criminal Evidence (TRCrE). Hearsay is not admissible except as provided by statute or these rules. Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.

Texas Transportation Code

Speed Signs. Article 201.904 of the Texas Transportation Code "The Department shall erect and maintain on the highways and roads of this state appropriate signs that show the maximum lawful speed for commercial motor vehicles, truck tractors, truck trailers, truck semi-trailers, and motor vehicles engaged in the business of transporting passengers for compensation or hire (buses)."

STATEMENT OF THE CASE

Facts Of Original, [1st] Amended And 2nd Amended Complaints Against Defendants. City of Wichita Falls police officer George Foster issued traffic citation no. 556441 against Debra Donoghue (hereinafter "Donoghue"), wife of petitioner, for the alleged criminal offense of "SPD Alleged 49 Limit 30 MPH" when Donoghue was exercising constitutionally protected right of travel. Police officer David Bynum (hereinafter Bynum) signed a sworn "Probable Cause Affidavit" stating that Bynum had examined a "complaint" and thereby requested a warrant issue against Donoghue (Appendix C1). Municipal Judge Larry A. Gillen signed a "Probable Cause Determination" stating that Gillen had examined all referenced documents and that the "complaint" was on file in the municipal court. Judge Gillen signed warrant no. 556441which stated on its fact that a complaint was on file with the municipal court (App. C1-2). Art. § 45.01 CCP requires a complaint be sworn by affiant ***before*** the municipal court has jurisdiction to act. A lawful "complaint" did

not exist when Bynum signed the "Probable Cause Affidavit" and when Gillen signed the "Probable Determination" and signed warrant no. 556441 against Donoghue (App. C1-3). Bynum and Gillen acted in clear absence of jurisdiction, issued a warrant against Donoghue without probable cause and conspired to deprive Donoghue of property under color of law.

Chief of Police Jack Schlieper (hereinafter Schlieper) was grossly negligent in failing to establish policies preventing Bynum from signing false sworn Affidavit requesting a warrant against Donoghue. The established policy and procedures of the City of Wichita Falls (hereinafter City) allowed warrant no. 55641 issue against Donoghue under color of law without a complaint being prepared.

Upon request by Donoghue, the municipal court sent a copy of unlawful warrant no. 556441 to Donoghue and Garrison. Garrison and Donoghue sent the municipal court $152 "under protest." Donoghue repeatedly requested that the municipal court send Donoghue a copy of the complaint in criminal case no. 556441. Provisions of Texas law, Art. §§ 45.01, 45.04(3) CCP; Texas Constitution Bill of Rights, Art. 1, § 10 all require that a copy of the complaint be filed in municipal court to commence proceedings and served on the defendant at least one day before the trial. Judge Gillen sent Donoghue a letter admitting that a complaint did not exist when Gillen issued warrant no. 556441 against Donoghue (Appendix C3).

May 28, 1997, the day of the trial in cause no. 556441, Garrison and Donoghue filed in the municipal court and served on the city attorney, a special appearance and motion to quash contesting the jurisdiction of the municipal court and informing the City and Gillen that Donoghue could not be prosecuted for travel, a protected right. At the trial, Deputy Assistant City Attorney Lee Pierson, (hereinafter Pierson) served on Donoghue a document alleged to be a complaint. The alleged complaint was sworn and signed by Delora Drake, Pierson's clerk. Ms. Drake is not a police officer and did not have first hand knowledge of the facts of citation no. 556441. Ms. Drake's alleged "complaint" is a hearsay statement that does not fall within one of the exceptions to hearsay and violates Texas Rule of Criminal Evidence (TRCrE) 802 and is void on its face. At the trial on May 28, 1997, Gillen

presided after admitting that he had read the Special Appearance informing Gillen that he had issued a warrant without a lawful complaint. Donoghue verbally notified Gillen that (1) Gillen issued a warrant against Donoghue without a complaint, (2) no crime had occurred in criminal case no. 556441 because Donoghue was traveling, (3) the city failed to prosecute with a lawful complaint, (4) and the city failed to serve Donoghue with a complaint one day before the trial. With full knowledge of the foregoing, the City prosecuted Donoghue for exercising the constitutional right of travel ,and in open court Gillen denied the special appearance after a hearing on the merits. A second trial date was set for June 24, 1997.

Two days after the trial, Garrison met with Pierson in effort to settle the dispute with the city and notified Pierson of the Due Process violation of issuing a warrant without a complaint and that Garrison was going to proceed legally against Gillen. The following week Garrison and Donoghue received an order filed in the municipal court signed by Gillen ***granting*** quash and terminating criminal case no. 556441 in favor of Donoghue (Appendix C4). After receipt of same order, Garrison and Donoghue did not hear from the municipal court or the City until after June 24, 1997.

On June 24, 1997 Pierson and City attorney Greg Humbach (hereinafter Humbach) conspired together to prosecute Donoghue a second time in violation of Double Jeopardy after criminal case no. 556441 was quashed and terminated in favor of Donoghue by Order filed in the municipal court. The city and the municipal court did not notify Garrison and Donoghue at any time, on or before June 24, 1997 and after quash, that a second trial of criminal case no. 556441 was to be held. Because no notice was given, Donoghue did not make an appearance on June 24 to plead Double Jeopardy. On June 24, Pierson requested forfeiture of bond, Gillen changed the order from quash "granted" to quash "denied", and ordered forfeiture of bond (Appendix C5). Gillen, Pierson and Humbach conspired together and prosecuted Donoghue under color of law a second time to cover up and "justify" the previous illegal acts of defendants and herein named city agents. Gillen sent by mail a letter informing Donoghue of the events on June 24 and a different “corrected” order denying

quash (Appendix C6-7).

Facts of Original and Amended Supplemental Pleadings. In December of 1997, Garrison and Donoghue filed complaints against Gillen with the Texas Commission on Judicial Conduct for Gillen's illegal acts in criminal case no. 556441. A copy of the same complaints were filed in the District Court and served on defendants. Gillen was notified by the Texas Commission of Garrison and Donoghue's complaint filed against him.

In January 1998, City of Wichita Falls police officer no. 521 issued citation no. 598004 to Donoghue for the alleged crime of "Expired M.V.R. (6/97)" while Donoghue was exercising her protected right of travel. Donoghue timely demanded a copy of the complaint. The city mailed Donoghue a document alleged to be a complaint. As in cause no. 556441 in the municipal court, the alleged complaint was sworn to by Delora Drake, clerk of Pierson. Ms. Drake is not a police officer and did not have first hand knowledge about the facts of citation 598004. Same alleged complaint is a hearsay statement violating TRCrE 802 (hearsay) and is void on its face. The fact that the City intentionally and illegally prosecuted Donoghue under two void complaints for exercising the constitutionally protected right of travel is evidence of policies and procedures of the City of depriving Citizens of rights protected under the National Constitution. Garrison and Donoghue filed in the municipal court and served on the city a "Special Appearance Notice of No Jurisdiction." Pierson and Humbach conspired together a second time to criminally prosecute Donoghue for exercising right of travel. Without notifying Donoghue or Garrison of the pending prosecution after service of special appearance, Pierson prosecuted Donoghue under the void complaint. Gillen intentionally and maliciously presided as judge with bias and interest in the outcome of criminal case no. 598004 against Donoghue. Two days after the trial, Pierson issued a criminal citation for "failure to appear" when Donoghue ***had*** filed a special appearance. Several days later, Gillen issued two unlawful warrants against Donoghue to punish Donoghue for filing complaints against Gillen with the Texas Commission on Judicial Conduct and for filing civil action at law no. 7-97-213-X in the District Court. The city did not notify

Garrison and Donoghue of the events at trial or that a trial ever even took place.

Over three months lapsed and at the end of June 1998, Donoghue and Garrison were notified for the first time by the Municipal Services Bureau of the two outstanding warrants against Donoghue for "Expired Motor Vehicle License" and "Failure to Appear". The letter indicated that the bond for the alleged violations was a total of $385. Garrison and Donoghue promptly demanded copies of the municipal court records.

Proceedings In the District Court. Garrison and Donoghue filed a complaint at law in the United States District Court Northern District of Texas Wichita Falls Division on August 28, 1997 against defendants. Plaintiffs' complaint established the jurisdiction of the District Court under Article III §§ 1, 2 of the National Constitution; First, Fourth, Fifth, Sixth, Eleventh and Fourteenth Amendments, 28 U.S.C. § 1343 (a)(1), (2), (3); 42 U.S.C. §§ 1983, 1985, 1986; Civil Rights Act of 1871; and the Bill of Rights of the Texas Constitution. Plaintiffs demanded a trial by jury under the Seventh Amendment.

Defendants City of Wichita Falls, David Bynum and Jack Schlieper filed, among other responsive pleadings, a motion to dismiss. Plaintiffs filed an objection against same motion and rebuttal of defendants objection. Plaintiffs filed numerous motions in the District Court for enforcement of discovery and improper filings of defendants. In October 1998, plaintiffs sent the District Court an Amended Complaint and Motion for Joinder of Parties which was received but not filed. The case languished in the District Court for the entire year of 1998 without District Judge Kendall entering a ruling on the numerous motions or allowing a hearing. Plaintiffs were unable to enforce discovery and motions due to unwillingness or neglect of Judge Kendall to enter rulings. From limited discovery consented to by defendants during 1998, new facts were discovered that authorizing additional causes of action against other city agents not listed in plaintiffs' original complaint.

In October 1998 plaintiffs sent to the District Court [1st] Amended Complaint with Supplemental pleadings and motion for

leave to file supplemental pleadings and join City agents, Gillen, Pierson and Humbach.

In December of 1998, defendants filed copies of a parallel case in the District Court at Wichita Falls that was filed by Garrison in the U.S. District Court Western District of San Antonio, entitled *Garrison v City of Grey Forest, et al,* case no. SA-97-CA-1272. Same San Antonio case was dismissed with prejudice by U.S. District Judge Edward C. Prado and was pending appeal which was ultimately dismissed by the Fifth Circuit Appellate Court in February 1999. Garrison petitioned this court for a writ of certiorari in the San Antonio case but was time barred by one day. Later Garrison obtained habeas corpus relief from the County Court at law in Bexar county against the City of Grey Forest. Further proceedings are pending against the City of Grey Forest, et al, U.S. District Judge Prado, and Fifth Circuit Judges Barksdale and Emilio Garza.

On January 11, 1999, Donoghue assigned all rights title and interest in the case to Garrison.

In the Order and Judgment filed on January 20 & 21, 1999, U.S. District Judge Joe Kendall granted defendants motion to dismiss. Final Judgment was entered dismissing Garrison's complaint with prejudice. In same Order, Judge Kendall changed and deleting facts plead by plaintiffs and falsely stated that the complaint had failed to state a claim upon which relief could be granted.

Proceedings in the U.S. Court of Appeals for the Fifth Circuit. Garrison filed an Appeal at law in the Fifth Circuit Article III Court of Appeals of the United States of America against the Judge Kendall's Order and Judgment. Garrison raised three errors on appeal and requested oral argument. Garrison filed judicial misconduct complaints against U.S. District Judges Joe Kendall and Edward Prado and Fifth Circuit Judges Barksdale and Emilio Garza which were dismissed by Chief Judge Carolyn King. Garrison filed motions to recuse Chief Judge Carolyn Dineen King, and Circuit Judges Rhesa Hawkins Barksdale and Emilio M. Garza from appeal of this case in the Fifth Circuit. Chief Judge King and Circuit Judges Jolly, and Parker decided the case without oral argument and affirmed the District Courts ruling

under 5th Cir. R. 47.5.4. and 5th Cir. R. 42.2 and sanctioned Garrison $100 for "lack of respect" evinced by motions to recuse.

A second Amended Complaint and Second Supplemental Pleadings were included in the Record Excerpts in the appeal filed by Garrison in the Fifth Circuit Appellate Court. Both the District and Appellate Court refused to file either the [1st] or Second Amended Complaints or [1st] or Second Supplemental pleadings sent by Garrison and refused to grant a trial by jury for disputed issues of fact though demanded by Garrison.

REASONS FOR GRANTING WRIT OF CERTIORARI

REASON I.

Decisions of the lower U.S. Courts in this case grossly depart from minimum Constitutional standards secured under the Bill of Rights, established by the U.S. Supreme Court, and mandatory on defendants under the Fourteenth Amendment in all criminal prosecutions.

Count 1. Violation of the Fourth Amendment – Warrant issued Without Probable Cause. As stated in the facts of the case, defendant Bynum signed a sworn statement entitled "Probable Cause Affidavit" that declared that Bynum had examined a "complaint" against Donoghue. Bynum did not have first hand knowledge of the alleged offense. Same affidavit requested a warrant issue against Donoghue in case no. 556441. Municipal Judge Larry Gillen signed a statement entitled "Probable Cause Determination" that declared that Gillen had examined "the affidavit and all documents referenced by it" including the complaint. Gillen then signed warrant no. 556441 which stated "Donoghue ... is accused by written complaint, under oath, now on file in said court" (Appendix C1-2) On April 07, 1997, the date warrant no. 556441 was issued, a complaint did not exist in support thereof (App. C3). Traffic offenses are criminal charges, Op Att. Gen. JM-917 (1988); *Smyth v State*, Tex.Cr.App. 634 S.W.2d 721; *Sam Basset v The State*. 139 Tex.Cr.App 65. Under Texas law a complaint ***must*** be filed for the municipal court to have jurisdiction.

> "Proceedings in a municipal Court ***shall*** be commenced by complaint, which shall begin: 'In the name and by authority of the State of Texas'; and shall conclude: 'Against the peace and dignity of the State'; ..." *Complaint*. Art. 45.01 Texas CCP (Emphasis added).

The term "proceedings" above is all inclusive and includes a warrant. The fact that both the "Probable Cause Affidavit" and warrant no. 556441 referenced a complaint is prima-facia proof that a complaint ***must exist*** to have lawful jurisdiction under Art. § 45.01 Texas CCP ***prior*** to the issuance of a warrant. Texas Courts have affirmed the requirement of a complaint imposed by statute.

> "Where the mode of acquiring jurisdiction is prescribed by statute, substantial compliance therewith is essential or the proceedings will be a nullity." *Ex Parte Caldwell*, 383 S.W.2d 587, 589 (Tex.Crim.App. 1964)

> "Jurisdiction of a court must be legally invoked, and when not legally invoked, the power of the court to act is as absent as if it did not exist. *State v Olsen* (Tex.) 260 S.W.2d 398." *Ex Parte Caldwell, supra,* 589.

Without a lawful complaint, Judge Gillen was acting in clear absence of lawful jurisdiction and without probable cause. Both Texas courts and the U. S. Supreme Court have affirmed this conclusion by decision.

> "The purpose of the complaint, then, is to enable the appropriate magistrate to determine whether the 'probable cause' required to support a warrant exists. Giordenello v United States, 357 U.S. 480, 486, 78 S Ct 1245, 1250, 2 L Ed 2d 1503, 1509 (1958)." *Lowery v State*, 499 S.W.2d 160, 163 (Tex. Crim. App 1973).

Probable cause is required under the Fourth Amendment for defendants and Judge Gillen to issue warrant no. 556441.

"... [N]o Warrants shall issue, but upon probable cause, supported by oath or affirmation, ... Fourth Amendment

The Fourth Amendment is mandatory on Judge Gillen and defendants under the Fourteenth Amendment.

"In *Ker v California,* 374 U.S. 23, we held that the Fourth 'Amendment's proscriptions are enforced against the States through the Fourteenth Amendment,' and that 'the standard of reasonableness is the same under the Fourth and Fourteenth Amendments.' Id., at 33." *Aguilar v Texas*, 378 U.S. 108, 110.

The District Court's order, affirmed by the Appellate Court, declares "the defendants' manner of processing the ticket followed rules and regulations that are not violative of plaintiffs' rights." The ruling of the lower courts in this case invalidates requirements under Texas law that a lawful complaint be filed in the municipal court prior to issuing a warrant; violates Fourth Amendment requirement of the existence of "Probable Cause" before issuing a warrant; and grossly departs from *Giordenello, supra* and *Aguilar, supra* thus providing justification for issuing a writ of certiorari.

Count 2. Violation of Fifth Amendment – Prosecution for Exercising Protected Right. Count 1 of Reason I is incorporated into and made a part hereof. On May 28, 1997, petitioner filed in the municipal court a Motion to Quash with supporting affidavit in criminal case no. 556441. By the same, the City and municipal court were thereby notified that Donoghue was traveling and not engaged in transportation. Both the City and Judge Gillen ignored the fact that Donoghue was traveling and commenced prosecution under purported authority of Texas "Transportation" statutes. Transportation statutes of Texas govern commercial activity exclusively. The Texas statute that specifically authorizes the posting of speed signs does not regulate travelers.

"The Department shall erect and maintain on the highways ... signs that show the maximum lawful speed for commercial motor vehicles, truck tractors, truck trailers, truck semi-trailers, and motor vehicles engaged in the business of transporting passengers for compensation or hire (buses)." ***Speed Signs***. Article 201.904, Texas Transportation Code.

"Transportation" has been repeatedly defined by the U.S. Supreme Court as commercial activity conducted by carriers for compensation.

"Transportation. The movement of goods or persons from one place to another, by a carrier, *Railroad Co. v Pratt*, 22 Wall 133, 22 L Ed 827, *Interstate Commerce Com'n v Brimson*, 154 US 447, 38 L Ed 1047. *Glouchester Ferry Co. v Penn.* 114 US 196, 29 L Ed 905." Blacks Law Dict. 5th Ed. p. 1344; See also *Southern RY. Co. v Reid,* 222 US 425, 441.

"A carrier which holds itself out to the general public to engage in transportation of passengers or property by motor vehicle is a "common carrier," while a "contract carrier" is one which, under individual contracts or agreements, engages in such transportation." *U.S. v. Contract Steel Carriers,* 350 U.S. 409, 100 L Ed. 482.

"A common carrier is one who undertakes ***for hire*** to transport from place to place the goods of those who may choose to employ him." *Propeller Niagara v Cordes,* 21 How 7, 16 L Ed 41.

Under Texas law entitled *Speed Signs, supra*, those engaged in non commercial travel are not subject to speed limitations due to posted speed signs. Transportation laws are advisory on travelers and also determine fault in accidents under "rules of the road". These facts are consistent with rulings of both Texas Courts and the U.S. Supreme Court.

"The streets of the cities of this country belong to the public, Primarily, every member of the public has the ***natural right*** to

the free use of such streets in the normal pursuit of his private or personal business or pleasure." *City of San Antonio v. Fetzer,* 241 SW 1034; *Patton-Worsham Drug Co. v Drennon,* 123 SW 705, (Emphasis added).

"This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhabited by statutes, rules, or regulations which unreasonably burden or restrict this movement." *Shapiro v. Thompson,* 394 U.S. 618, 22 L. Ed. 603, 612. *Corfield v Coryell*, 4 Wash. C.C. 371, 380-381; *Slaughter-House Cases*, 16 Wall. 36, 76." *United States v Wheeler,* 254 US 281; *Williams v Fears,* US 270, 274; *United States v. Guest,* 383 US 745, 16 L Ed 2d 239.

Act of defendants and City agents of prosecuting Donoghue for exercising the Constitutionally secured right of travel on two separate occasions is a due process violation secured under the Fifth Amendment mandatory on defendants under the Fourteenth Amendment.

"To punish a person because he has done what the law plainly allows him to do is a due process violation 'of the most basic sort.' *Bordenkircher v Hayes*, 434 US 357, 363, 98 S Ct 663, 669, 54 L Ed 2d 604. In a series of cases beginning with *North Carolina v Pearce* and culminating in *Bordenkircher v Hayes*, the Court has recognize this basic-and itself uncontroversial-principle. ... an individual ... certainly may *not* be punished for exercising a protected statutory or constitutional right." *U.S. v Goodwin*, 457 US 368, 372, 102 S Ct 2485, 2488, 73 L Ed. 2d 74 (Emphasis added)

The ruling of the District and Appellate Court unconstitutionally extends Texas Transportation Statutes beyond the limited scope of "transportation", violates the right of travel, and conflicts with the aforementioned U.S. Supreme Court cases thereby authorizing a writ of certiorari.

Count 3. Violation of Fifth Amendment – Double Jeopardy Prosecution. Counts 1 & 2 of Reason I are incorporated into and made a part hereof. After the hearing on the merits held on May 28, 1997, Judge Gillen signed an order granting the special appearance and motion to quash filed by Donoghue and Garrison in case no. 556441. Same Order was filed in the municipal court record and mailed to petitioner. Texas has passed statutes barring a second prosecution after quash.

> "An acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been; " ***Acquittal a Bar***. Art. § 1.11 Texas CCP

The Texas Court of Criminal Appeals has stated that granting motion to quash terminates the proceeding.

> "The granting of a motion to quash ... 'are synonymous in their common meaning: "To vacate, to annul, to make void." [Quoting State v Eaves, 800 SW 2d 220, 221 n. 5 (Tex. Crim. App 1990)] ... Thus, a trial court's order quashing an ... information in essence terminates the proceedings." *State v Pierce*, 816 SW 2d 824, 830 (Tex.Crim.App.-Austin 1991)

Under Texas law supra, once a hearing on the merits has been held and an order granting quash signed and entered in the court record the case is terminated. The City and Judge Gillen violated Donoghue's right against Double Jeopardy secured under the Texas Constitution, Art. 1, § 14; Texas CCP Art. §§ 1.10, 1.11 and the Fifth Amendment of the National Constitution when Donoghue was prosecuted a second time in case no. 556441 after quash and termination of same cause in favor of Donoghue. The U.S. District and Appellate Court's Order and Judgment dismissing petitioner's complaint with prejudice grossly violates established Texas law, rulings of the U.S. Supreme Court and the Fifth Amendment and authorizes a writ of certiorari.

Count 4. Violation of Fifth Amendment – Deprivation of Property Without Due Process. Counts 1 through 3 of Reason I

are incorporated into and made a part hereof. Aforesaid acts of the defendants and Gillen in requesting and issuing an unlawful warrant against Donoghue caused petitioner to post bond "under protest" to avoid unlawful seizure. The intentional and unlawful prosecution of Donoghue for exercising the constitutional right travel and double jeopardy prosecution of Donoghue without notice of the second trial did cause defendant City and its agents to deprive Petitioner of property (bond) without due process of law. Petitioner's right of property is secured under the Fifth Amendment and mandatory on defendants under the Fourteenth Amendment. The number of U.S. Supreme Court cases upholding this fundamental principle are too numerous to list. And the ruling of the District and Appellate Courts of dismissing petitions' complaint with prejudice denies justice and grossly departs from this established cornerstones of justice authorizing a writ of certiorari to issue.

Count 5. Violation of the Seventh Amendment – Deprivation of Trial by Jury. In both the U.S. District Court and Fifth Circuit Appellate Court Garrison demanded a trial by jury under the Seventh Amendment. Defendants filed an original answer to plaintiffs' original complaint and identified disputed issues of fact. The Supreme Court has held that a trial by jury is applicable to Civil Rights claims.

> " 'The phrase 'common law,' found in this clause, is used in contradistinction to equity, and admiralty, and maritime jurisprudence ... By common law, [the Framers of the Amendment] meant ... suits in which legal rights were to be ascertained and determined, ... In a just sense, the [Seventh] amendment than may well be construed to embrace all suits which are not of equity and admiralty jurisdiction, whatever might be the peculiar form which they may assume to settle legal rights.' *Parsons v Bedford,* 3 Pet. 433, 446 447 (1830)." *Curtis v Loether*, 415 US 189, 39 L Ed 2d, 260, 94 S Ct 1005

Rulings of the lower U.S. Courts in this case deny Garrison's right to have legal rights determined in a trial by jury and conflict with *Parsons, supra and Curtis, supra* thus authorizing a writ of

certiorari to issue.

REASON II.

Judges in the lower courts have dismissed with prejudice all claims of petitioner under purported authority of "discretion" when petitioner's case was filed at law meeting the statutory requirements of 42 U.S.C. § 1983. Same acts obliterate the Constitutional distinction between law, equity, and admiralty mandatory on Art. III Courts.

Petitioners' Pleadings. Reason I is incorporated into and made a part hereof. Petitioner's original complaint filed in the U.S. District Court listed sufficient facts to provide numerous causes of action for civil rights violations of petitioners. Petitioners' first and second amended complaints, first and second supplemental pleadings were received by the U.S. District Court but ***not*** filed. Same amended complaints and supplemental pleadings listed additional facts showing additional causes of action for civil rights violations committed by defendants and other agents of the City against petitioners.

Actions of the U.S. District and Appellate Court. U.S. District Judge Joe Kendall refused to allow petitioners' to amend the original complaint and refused to allow supplemental pleadings. Petitioner filed numerous motions in the District Court in the year 1998. During the entire year of 1998, Judge Kendall did not rule on a single motion filed. Garrison was not able to enforce discovery, obtain a hearing or effectively move forward because of the refusal or neglect of Judge Kendall to do justice and perform the normal functions of the office of U.S. District Judge in regards to petitioners' case. The Supreme Court has defined justice in this context.

> In all judicial actions promptness of decision is one of the elements of justice. *Allegheny County v. Frank Mashuda Co.*, 360 US 185, 3 L Ed 2d 1163, 79 S Ct 1060.

Failure of Judge Kendall to timely rule on motions filed and failure to provide an opportunity to present oral argument did deny Garrison justice in the District Court and grossly departs from *Allegheny, supra.*

In January of 1999, Judge Kendall exercised unjustified discretion by granting defendants motion to dismiss under purported authority of Fed. R. Civ. P. 12(b)(6) and dismissed petitioners' complaint with prejudice without a single opportunity to enter the courtroom and present oral argument. The U.S. Court of Appeals exercised unjustified discretion by affirming the actions of Judge Kendall without affording petitioners an opportunity to enter the Appellate Court and present oral argument or be heard. The Appellate Court cited *Ashe v Corley,* 992 F.2d 540, 542 (5th Cir. 1993) as justification for not permitting complaint amendment. In *Ashe, supra* prisoner petitioners had been granted leave to amend their complaint three times. Petitioner was not granted leave at any time to amend complaint in instant case. The Appellate Court also declares that:

> The appeal is without arguable merit and thus DISMISSED. See 5th Cir. R. 42.2; Howard v King, 707 F.2d 215, 220 (5th Cir. 1983)." *Order* (Appendix A1-2)

The rule referenced by the Court of Appeals as alleged justification for dismissal of Garrison's appeal at law states:

> "If upon the hearing of any interlocutory motion or as a result of a review under Loc. R. 34, it shall appear to the court that the appeal is frivolous and entirely without merit, the appeal will be dismissed." Local 5th Circuit Rule 42.2

Garrison filed an appeal at law, not an interlocutory appeal. Local Rule 34 is entitled *Oral Argument* and provides guidelines for presenting oral argument before the Court of Appeals. Garrison was not afforded an opportunity to present oral argument though requested. In *Howard v King, supra,* the Appellate Court reversed a dismissal and remanded the case for trial which is contrary to and defies dismissal of Garrison's case.

Plaintiffs' Petition Establishes Jurisdiction of the U.S. Courts. It is a fundamental cornerstone of the American judicial system from inception that plaintiffs' complaint establishes the jurisdiction of the U.S. District and Appellate Courts.

> "[T]he jurisdiction of a ... Court of the United States is limited in the sense that it has no jurisdiction except that conferred by the Constitution and laws of the United States; ... [and] such jurisdiction, or the facts upon which in legal intendment it rests, must be distinctly and positively averred in the pleadings or should appear affirmatively and with equal distinctness in other parts of the record, it not being sufficient that jurisdiction may be inferred argumentatively;" *Thomas v Board of Trustees,* 195 US 207, 210. See also *Wood v Wagnon,* 6 US 9, 2 L Ed 191; *Fishback v Western Union Telegraph Co.,* 161 U.S. 96, 40 L Ed 630, 16 S Ct 506.

> "The nature of this suit is to be determined by the Court, as a matter of law, ***solely from the facts alleged in the petition***, the principal rights asserted, and the relief sought." *South Padre, Etc. v Texas Commerce Bank Nat.,* 538 S.W.2d 475, 480 (Emphasis added).

As previously stated, petitioner established the jurisdiction of the U.S. District Court as a case at law under Article III of the National Constitution which in relevant part declares:

> "The judicial Power ***shall*** extend to all Cases, in ***Law*** ..., arising under this Constitution, [and] the Laws of the United States, ..." Article III, sec. 2. (Emphasis added).

As shown in Article III supra, as well as the Seventh Amendment and Eleventh Amendments, the National Constitution expressly recognizes a distinction between courts of law and equity, and Congress is without Power to abolish it. *State of Pennsylvania, v. Wheeling & B Bridge Co.,* 18 How 460, 15 L Ed 450; *Mississippi Mills v. Cohn,* 150 US 205, 37 L Ed 1053, 14 S Ct 75. Under the aforementioned authority, the National Courts are bound to proceed at law when plaintiffs' petition established the jurisdiction at law.

Defendants repeatedly plead alleged "immunity" in both the District and Appellate Courts. It has been firmly established that when state agents act under color of law official immunity does not apply.

"[S]ince *Ex parte Young,* 209 US 123, it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under color of state law. *Ex Parte Young* teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he:

> 'comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected ***in his person*** to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." Id., at 159-160. (Emphasis supplied.)' " *Scheuer v Rhodes,* 416 US 232, 237, 40 L Ed 2d 90, 94 S Ct 1683

"In *Monroe v Pape,* supra, Mr. Justice Douglas, writing for the Court, held that the section in question was meant "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." Congress intended "to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." Id., at 171-172." *[Scheuer]* Id. at 243.

Judge Gillen is subject to Civil Rights claims for (1) issuing a warrant in clear absence of jurisdiction and (2) "vindictive acts" of sitting in judgment over Donoghue full knowing that no crime had occurred and after Donoghue filed judicial misconduct complaints against Gillen.

"When it is beyond reasonable dispute that a judge has acted out of personal motivation and has used his judicial office as an offensive weapon to vindicate personal objectives, and it further appears certain that no party has invoked the judicial machinery for any purpose, the judge's actions do not amount to "judicial acts." and such nonjudicial acts are not cloaked

with judicial immunity from suit under Civil Rights Acts of 1871. 42 U.S.C. § 1983." *Harper v Merkle*, 638 F.2d 848 (5th Cir 1981)

"Where there is clearly no jurisdiction over the subject-matter any authority exercised is usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible ... [and] his commission would afford no protection to him in the exercise of the usurped authority." *Bradley v Fisher*, 80 U.S. 335, 20 L Ed. 646. (emphasis added).

"...there is nothing to suggest that Congress intended ... to insulate state judges completely from federal collateral review." *Pulliam v Allen*, 466 US 522, 80 L Ed 2d 565, 104 S Ct 1970 (1984)

And when a municipality has policies and procedures that violate rights of Citizens, secured by the National Constitution it also may be held liable under 42 U.S.C. § 1983, *Board of the County Commissioners of Bryan County, Oklahoma v. Brown, et al.*, United States Supreme Court, Case No. 95-1100; *Monell v New York City Dept. of Social Servs.*, 436 U.S. 658, 56 L Ed 2d 611, 98 S Ct 2018. Additionally, this Court has held that a single tortuous decision by the city decision maker (city attorney) may create liability under 42 U.S.C. § 1983 against the municipality; *Pembaur v. Cincinnati*, 475 U.S. 469, 89 L Ed 2d 452, 106 S Ct 1292.

From the foregoing and the fact of Garrison's Complaints sent to the District Court, immunity is not a viable defense for defendants or agents sought to be joined.

Judicial Discretion Defined. Having established the jurisdiction of the U.S. District and Appellate Courts in this case at law, the judges are bound by the law established under Garrison's petition and do not have independent discretion.

"Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of

the law, and can will nothing. When they are said to exercise a discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the Judge; always for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the law." *Osborn v U.S. Bank*, 22 U.S. (9 Wheat.) 738, 866

The will of the legislature in passing the Civil Rights Acts which 42 U.S.C. § 1983 is derived from is to provide a means of redress in the National Courts for acts committed by State agents under color of law that deprive Citizens of rights secured under the National Constitution. Under *Osborn, supra*, the District and Circuit Judges are bound to follow the mandates of the Civil Rights Act(s) that established the jurisdiction of Garrison's complaint.

Duty of U.S. Courts to Provide Redress. The Supreme Court has declared that National Courts have a duty to provide effective redress when legitimately petitioned.

"The District Court dismissed petitioners' claim at the pleading stage pursuant to Federal rule of Civil Procedure 12 (b)(6) so their complaint must be sustained if relief could be granted 'under any set of facts that could be proved consistent with the allegations.' *Hishon v King & Spalding*, 467 U.S. 69, 73 (1983)." NOW v Scheidler, 510 U.S. 249, 256.

"[T]he solemn responsibility of the federal courts [is] to 'guard, enforce and protect every right granted or secured by the Constitution of the United States.' Robb v Connolly, 111 U.S. 624, 637." *Kusper v Pontikes*, 414 US 51, 55, 38 L Ed.2d 260, 94 S Ct 303

Reviewing facts of petitioners' complaint and supplemental pleadings it cannot be denied that both Donoghue and Garrison's Constitutional rights under the First, Fourth, Fifth, and Sixth Amendments were violated by acts of defendants committed

under color of law. The Supreme Court has established the requisite factors of standing to sue defendants.

> In order to satisfy requisite of case or controversy under Article III of Constitution, '[t]he constitutional question ... [must] be presented in context of specific live grievance.' Golden v Zwickler, 394 U.S. 103, 110 (1969)" *Goosby v Osser*, 409 US 512, 517, 35 L Ed 2d 36, 93 S Ct 854. (1973)

Both Donoghue and Garrison suffered direct injuries as a result of acts and omissions of defendants committed under color of law that did deprive Donoghue and Garrison of rights secured and protected under both the Texas and National Constitutions.

Article III, supra, *Osborn v U.S., supra, Hishon, supra, NOW v Scheidler, supra, Kusper, supra, and Goosby, supra* impose a duty on District and Appellate Court to hear petitioners' case and proceed at law. Dismissal of petitioners' case as frivolous, when same case was filed at law fulfilling the requirements of the Civil Rights Act, is an exercise of unjustified discretion by the lower courts that obliterates the constitutional distinction between law, equity and admiralty. Further, the Judges of the lower courts in this case have acted using their own will rather than enforce the "will of the legislature" under jurisdiction established by Garrison's petitions. And have grossly departed from the aforementioned decisions of the Supreme Court providing justification for writ of certiorari to issue.

REASON III.

> Petitioner has no other effective lawful means of redress for damages caused by defendants short of filing Biven's lawsuits against each U.S. Judge individually who participated in this case in the lower courts

Reasons I and II are incorporated into and made a part hereof. Petitioners' case was filed in the District Court in Wichita Falls on August 28, 1997 and has dragged through the Courts for over two years until dismissed on December 7, 1999 by Order filed in the U.S. Court of Appeals. During that time the District Court

record has grown to three volumes. Both the District and Appellate Courts dismissed petitioners' complaint with prejudice without an opportunity to enter the courtroom and present oral argument on a single occasion. The Circuit Judges affirmed the dismissal of the District Court and sanctioned petitioner Garrison for "lack of respect ... evinced in the motion to recuse ... Judges of this Court". The motions to recuse referenced by the Appellate opinion were filed against Chief Judge Carolyn Dineen King, Circuit Judges Rhesa Hawkins Barksdale and Emilio M. Garza (Appendix D2-10).

In a parallel case filed by Garrison against the City of Grey Forest, Texas; Municipal Judge David Rogers officially and individually; and Police Officer Robert S. Taylor, officially and individually in the U.S. District Court Western District of San Antonio, case no. SA-97-CA-1272 and Fifth Circuit case no. 98-50469, both the District and Appellate Courts dismissed Garrison's complaint with prejudice without an opportunity to enter the courtroom and present oral argument. Because of the dismissal with prejudice of the case against the City of Grey Forest, et al, Garrison filed complaints for impeachment against District Judge Prado and Circuit Judges Barksdale and E. M. Garza for treason to the National Constitution and violations of 18 U.S.C. § 242. Garrison also filed complaints against District Judges Edward Prado, Joe Kendall and Circuit Judges Barksdale and E. M. Garza with the Fifth Circuit Appellate Court for judicial misconduct. Chief Judge Carolyn King issued an Order dismissing all judicial misconduct complaints. Garrison filed an administrative appeal of Chief Judge King's dismissal which was also dismissed. Due Process requires that all Judges remain unbiased and uninterested in the outcome of petitioners' case.

> "It has long been recognized that freedom of the tribunal from bias or prejudice is an essential element of due process. (Cites not included.)" *USA v Sciuto,* 531 F.2d 842 (1976).

> "The due process clause of the Fifth Amendment entitles a person to an impartial and disinterested tribunal in both civil and criminal cases, ..." *Marshal v Jerrico, Inc.*, 446 US 238, 100 S Ct 1610, 64 L Ed 2d 182

Because of the herein referenced impeachment and misconduct complaints, Garrison filed motions to recuse Circuit Judges Barksdale, E. M. Garza and Chief Judge King from petitioner's case in the Court of Appeals (Appendix D2-10).

The Court of Appeals Order confirming the dismissal of petitioners' case in the District Court was issued "pursuant to 5th Cir. R. 47.5, ... and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4." which may impose a fictional res judicata bar against Garrison pursuing further claims against defendants. The appellate opinion imposed a $100 sanction on Garrison for "lack of respect" and stated:

> "The clerk of this court shall accept no further filings from Garrison until the $100 sanction is paid." ***Order*** (App. A2).

According to an article published in newsletter distributed in February 2000 by the Alliance Defense Fund, approximately 130 out of the 8000 or about 1 out of 61 cases filed annually in the U.S. Supreme Court are reviewed by the high court. Petitioner has a statistical chance of less than two percent of having instant petition for writ of certiorari granted. If certiorari is not granted by this Court, Garrison is barred from access to the Fifth Circuit Court of Appeals until the sanction is paid and may be barred by res judicata from bringing claims against defendants in any other Court. Same order of the Appellate court does unconstitutionally deny Garrison access to the Court of Appeals and does conflict with the following Texas Court Decisions.

> "The open courts provision contained in Article I, § 13 [of the Texas Constitution] traces its origins to the Magna Carta. See LeCroy v Hanlon, 713 S.W.2d 335, 339 (Tex. 1986). The right of access to the courts has been at the foundation of democracy in this country, and every Texas Constitution has contained the same open courts provision. *Id.* at 339. This provision guarantees all Texans the right to redress their grievances in court *Id.* at 341; Nelson v Krusen, 678 S.W.2d 918, 921 (Tex. 1984)." Glass v Glass, 826 S.W.2d 683, 687 (Tex. Civ. App. 1992)

The only remaining method of redress for Garrison to obtain justice for defendants unlawful conduct is to file a Bivens lawsuit against the District Judge Kendall and Circuit Judges King, Jolly and Parker for treason to the National Constitution,[1] and violation of the First Amendment right "to petition the Government for a redress of grievances."

In Garrison's parallel case referenced herein against the City of Grey Forest, et al, Garrison obtained habeas corpus relief for the unlawful acts of the City of Grey Forest, and Judge Rogers after dismissal by the Fifth Circuit Court of Appeals. Since that case was also dismissed with prejudice by the District and Appellate Court,[2] Bivens lawsuits are pending against District Judge Edward C. Prado and Circuit Judges Barksdale and E. M. Garza as well as further proceedings against the City of Grey Forest, et al.

In all proceedings in the lower U.S. Courts in this case, Garrison has not been given the opportunity to present oral argument against defendants and is presently barred from pursuing justified claims against defendants and prohibited from filing documents in the Fifth Circuit Appellate Court. In the interest of justice, a writ of certiorari should issue so that Garrison may have the opportunity to plead claims against defendants and the judicial doctrines of law established by this Court are preserved.

Signed this 4th day of March the year of our Lord 2000 A.D.

Kurt Garrison, JD
natural State Citizen of Texas

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[1] "... We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be ***treason to the Constitution.*** ..." *Cohen v Virginia*, 6 Wheat 264, 5 L Ed 257; Quoted and approved in *Ex Parte Young*, 209 US 123. (Emphasis added).

[2] Garrison petitioned the U.S. Supreme Court for a writ of certiorari but was time barred by one day.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10210
Summary Calendar

KURT CHARLES GARRISON ET AL.,
Plaintiff

KURT CHARLES GARRISON,
Plaintiff-Appellant,

versus

WICHITA FALLS TX. CITY OF; JACK SCHLIEPER, Individually and in his official capacity as Chief of Police; DAVID BYNUM, Individually and in his official capacity as Policeman,
Defendants –Appellees.

Appeal From The United States District Court
For the Northern District of Texas
USDC No. 7:97-CV-213-X

Before KING, Chief Judge, JOLLY and Parker, Circuit Judges.
PER CURIAM:
Kurt Charles Garrison appeals the district court's dismissal of his pro se civil rights complaint wherein he argued that the issuance of a speeding ticket to his wife resulted in a violation of several constitutional rights. Assuming, arguendo, that Garrison has standing to bring this appeal, we find it frivolous.

The district court did not abuse its discretion by denying Garrison leave to amend the complaint. See Ashe v Corley, 992F.2d 540, 542 (5th Cir. 1993). Nor did the court err by dismissing the complaint for failure to state a claim without trial by jury. See Fed. R. Civ. P. 12 (b)(6).

The appeal is without arguable merit and thus is Dismissed. See 5th Cir. R. 42.2; Howard v King, 707 F.2d 215, 220 (5th Cir. 1983). All outstanding motions are Denied. In addition, we impose upon Garrison a monetary sanction of $100 based on the lack of respect for this Court evinced in the motion to recuse various Judges of this Court.

The Clerk of this Court shall accept no further filings from Garrison until the $100 sanction is paid.

APPEAL DISMISSED; MOTIONS DENIED; SANCTION IMPOSED.

U.S. COURT OF APPEALS
FILED
DEC 07 1999
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

KURT CHARLES GARRISON, et al.	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO.
CITY OF WICHITA FALLS, et al.	§	7:-97-CV-213-X
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is defendants' Motion to Dismiss seeking a dismissal of all plaintiffs' claims. After review of the motion and the corresponding response and reply, it is the opinion of the Court that the motion should be and hereby GRANTED.

DISCUSSION

Defendants have moved for dismissal of this case in its entirety under Fed. R. Civ. P. 12(b)(6) for failure to state claim upon which relief can be granted. The United States Court of Appeals for the Fifth Circuit has established two primary considerations for a court's analysis of the propriety of dismissal under Rule 12(B)(6). First, the court must accept as true all well pleaded facts in the complaint, and the complaint is to be liberally construed in favor of the plaintiff; however, the court will not accept conclusory allegations in the complaint as true. Kaiser Aluminum chem. Sales, Inc. v Avondale, 677 F.2d 1045, 1050 (5th Cir. 1982), cert denied, 459 U.S. 1105 (1983). Second, a complaint should not be dismissed for failure to state a claim unless is appears beyond a doubt that the plaintiff can prove no set of facts that would entitle it relief. Id. Dismissal under Rule 12(b) is warranted when the facts alleged, taken as true, fail to state a claim for relief or when a successful affirmative defense has been plead. Id.

Because all well-pleaded facts must be accepted as true, the Court states with are citation of the facts of the case as plead in the complaint. The basis for this entire federal case is traffic ticket received by plaintiff Debra Donoghue. Donoghue was ticketed by a police officer for the City of Wichita Falls and was required to appear in municipal court. Donoghue posted bond via the mail for her failure to appear. Donoghue then appeared at the first trial setting at which she refused to enter a plea. She failed to appear at the second trail setting and her bond was

forfeited. From this traffic ticket, plaintiffs have field a federal lawsuit replete with allegations of violations of state law and of federal constitutional rights.

After review of plaintiffs' complaint, the Court has determined that plaintiffs have failed to state a claim for which relief can be granted. The set of facts described in plaintiffs' complaint do not establish the violations of law asserted by plaintiffs. The defendants' issuance of the traffic ticket and the manner in which plaintiff Donoghue was held accountable for the ticket do not create a violation of constitutional rights. Moreover, the defendants' manner of processing the ticket followed rules and regulations that are not violated of plaintiffs' rights. Therefore, the Court is of the opinion that the defendants' motion to dismiss should be and it hereby is GRANTED.

SO ORDERED

Dated: January 20, 1999.

/s/ JOE KENDALL
UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED JAN 20 1999
NANCY DOHERTY, CLERK
BY [unknown] Deputy

ENTERED ON THE DOCKET
JAN 20 1999
U.S. DISTRICT CLERKS OFFICE

Certified a true copy of an instrument on file in my office on 3/10/99 NANCY DOHERTY, Clerk, U.S. District Court, Northern District of Texas by [unknown] deputy.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

KURT CHARLES GARRISON, et al.	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO.
CITY OF WICHITA FALLS, et al.	§	7:-97-CV-213-X
Defendants.	§	

FINAL JUDGMENT

By separate Memorandum Opinion and Order filed on January 20, 1999, it is ORDERED and ADJUDGED that plaintiffs take nothing by this action and that their complaint be DISMISSED WITH PREJUDICE. Costs of court as calculated by the clerk of court are taxed against plaintiffs.

SO ORDERED.
Dated: January 21, 1999

/s/ JOE KENDALL
UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED JAN 21 1999
NANCY DOHERTY, CLERK
BY [unknown] Deputy

ENTERED ON THE DOCKET
JAN 21 1999
U.S. DISTRICT CLERKS OFFICE

Certified a true copy of an instrument on file in my office on 3/10/99 NANCY DOHERTY, Clerk, U.S. District Court, Northern District of Texas by [unknown] deputy.

PROBABLE CAUSE AFFIDAVIT

I, The undersigned affiant, being duly sworn, do state under oath that I have examined all documents filed in this cause which are attached hereto and made part of this affidavit. Based on my examination, I have good reason to believe and do believe that the defendant named in this cause committed the offense listed in the citation, complaint and probable cause affidavit. This information has been provided to me by the person who executed it, and I believe it to be credible. I furthermore state under oath that I have diligently searched the records maintained by the clerk of the Wichita Falls Municipal Court, and that such search revealed no record of an appearance by the defendant as required by citation, bond summons or other notification.

Wherefore, affiant request that an arrest warrant be issued for this defendant in accordance with the law. /s/ David Bynum, 592

PROBABLE CAUSE DETERMINATION

On this date, the above affiant appeared before me, and after being duly sworn, executed the foregoing affidavit. After examining the affidavit and all documents referenced by it, I have determined that probable cause exists for the issuance of an arrest warrant for the defendant named in this cause, with bond set I the amount specified in the warrant. Date Apr 07 1997. /s/ Larry A. Gillen, Wichita Falls Municipal Court

Warrant of Arrest
ISSUED

4700 CAPE COD PHO:696509
WICHITA FALLS. TX 763100000
DATE OF WARRANT – 4/08/97

TOTAL FINES $80.00
NHF43M TX OPERID: BEV COURT COST $40.00
WHITE 92 HONDA CIVIC WARRANT FEE 35.00
DEFENDANT DOB: 09/28/61 --------
10108156 TX TOTAL DUE $155.00
RACE: W SEX: F
WEIGHT: 115 HEIGHT: 5' 7"
HAIR: BRN EYES: HZL
BUSINESS:

Warrant of Arrest

The State of Texas
VS
DONOGHUE, DEBRA J

No. 556441
IN THE MUNICIPAL COURT
CITY OF WICHITA FALLS, TEXAS

TO THE CHIEF OF POLICE, MARSHAL OR ANY POLICEMAN IN THE CITY OF WICHITA FALLS

GREETINGS

YOUR ARE HEREBY COMMANDED TO TAKE THE BODY OF THE ABOVE NAMED AND BRING HIM OR HER BEFORE THE MUNICIPAL COURT OF THE CITY OF WICHITA FALLS, AT 611 BLUFF IN SAID CITY, WICHITA COUNTY, TEXAS, INSTANTER, THERE TO ANSWER THE STATE OF TEXAS FOR AN OFFENSE AGAINST THE LAWS OF SAID STATE, TO WIT:

SPEEDING 49 IN 30 MPH ZONE 55644 3/18/97

OF WHICH OFFENSE HE OR SHE IS ACCUSED BY WRITTEN COMPLAINT, UNDER OATH, NOW ON FILE IN SAID COURT.

HEREIN FAIL NO BUT DUE RETURN HEREOF MAKE, AS THE LAW REQUIRES, SHOWING HOW YOU HAVE EXECUTED SAME.

WITNESS MY HAND AND OFFICIAL SEAL THIS APR 08 1997 A.D.

(L.S.) [Seal] MUNICIPAL COURT IN WICHITA FALLS, TEXAS

/S/ LARRY A. GILLEN
MUNICIPAL JUDGE

Wichita Falls
TEXAS
MUNICIPAL COURT
(817) 761-7880

April 28, 1997

Debra Keam Donoghue
4700 Cape Cod
Wichita Falls, TX 76310

Re: State of Texas vs.
Debra Jean Donoghue
Cause no. 556441

Dear Ms. Donoghue:

Your letter of April 18, 1997 [requesting a copy of the verified complaint] has been forwarded to me for review. In view of the circumstances, I am setting your case for trial on May 28, 1997, Wednesday, at 2:00 p.m.. The formal complaint will be prepared by the prosecution and forwarded to you prior to trial. If you do not choose to appear for trial, the bond against you will be forfeited and the case closed.

Sincerely,

/s/ Larry A. Gillen
Presiding Judge

LAG/st

611 Bluff Street Wichita Falls, Texas 76301

NO. 556644 [556441]

STATE OF TEXAS	IN THE MUNICIPAL COURT
VS.	OF RECORD OF
DEBRA DONOGHUE	THE CITY OF WICHITA FALLS, TEXAS

ORDER

On this day came to be heard the defendants Motion to Quash and Special Appearance. The Motion to Quash and Special Appearance is hereby:

GRANTED.

Signed on this 28 day of May 1997.

/s/ LARRY A. GILLEN
Presiding Judge

FILED
JUN 02 1997
Municipal Court
Wichita Falls, Texas
By [unknown] Deputy Clerk

NO. 556~~644~~ 441 [1]

STATE OF TEXAS	IN THE MUNICIPAL COURT
VS.	OF RECORD OF
DEBRA DONOGHUE	THE CITY OF WICHITA FALLS, TEXAS

ORDER

On this day came to be heard the defendants Motion to Quash and Special Appearance. The Motion to Quash and Special Appearance is hereby:

~~GRANTED~~ [1]

DENIED

Signed on this 28 day of May 1997.

/s/ LARRY A. GILLEN
Presiding Judge

FILED
JUN 02 1997
Municipal Court
Wichita Falls, Texas
By [unknown] Deputy Clerk

[1] At each location indicated by this footnote other markings appear that are not discernable but may be the signature of Municipal Judge Larry A. Gillen.

WICHITA FALLS MUNICIPAL COURT
611 BLUFF STREET
WICHITA FALLS, TEXAS 76301
(940) 761-7880

June 24, 1997

Debra Jean Donoghue
4700 Cape Cod
Wichita Falls, TX 76310

Re: State of Texas vs.
Debra Jean Donoghue
Cause no. 556441

Dear Ms. Donoghue:

Notice is hereby given that your cash bond is now forfeited. Also enclosed is an order denying your motion to quash the complaint.

Sincerely,

/s/ Larry A. Gillen
Presiding Judge

LAG/st

NO. 556441

STATE OF TEXAS	IN THE MUNICIPAL COURT
VS.	OF RECORD OF
DEBRA DONOGHUE	THE CITY OF WICHITA FALLS, TEXAS

corrected ORDER

On this day came to be heard the defendants Motion to Quash and Special Appearance. The Motion to Quash and Special Appearance is hereby:

DENIED.

Signed on this 28 day of May 1997.

/s/ LARRY A. GILLEN
Presiding Judge

FILED
4
JUN 28 1997
Municipal Court
Wichita Falls, Texas
By [unknown] Deputy Clerk

County of Bexar)
) ss.
State of Texas)

Assignment of Claim for Damages

Know all men by these presents, that I, Debra Jean Donoghue, (assignor) in consideration of the sum of twenty one dollars, lawful money of the United States, and of other good, valuable, and sufficient considerations, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, set, and delivered over, and by these presents do sell, assign, transfer, set, and deliver over unto Kurt Charles Garrison, (assignee) his executors, administrators, and assigns, to his and their own proper use, benefit, and behoof forever, any and all sum or sums of money now due or owing to me, and all claims, demands and cause or causes of action of whatsoever kind and nature, which I have had, or now have, or may have against the city of Wichita Falls; David Bynum; Jack Schlieper; Larry A. Gillen; Greg Humbach; Lee Pierson, or any other person or persons, and each and either of them, whether jointly or severally, arising out of, or for any other loss injury, or damage by me sustained, or cause or causes of action arising, growing out of, or relating to or connected with criminal cause no.s 556441, 598004, 603227 in the municipal court of Wichita Falls; Civil action at law no. 7-97-CV-213-X in the District Court of the United States Northern District of Texas Dallas Division at Wichita Falls and any related action or complaint.

And I hereby constitute and appoint Kurt Charles Garrison, his executors, administrators, and assigns, my true and lawful attorney-in-fact, irrevocable, with full power of substitution and revocation, for me and in my name, or otherwise, but for the sole use and benefit of Kurt Charles Garrison, his executors, administrators, and assigns, to ask, demand, sue for, collect receive, compound, and give acquittance for the said claim or claims, or any part thereof.

Signed this 11th day of January, the year of our Lord 1999 A.D.

/s/ Debra Jean Donoghue

The foregoing instrument was subscribed and affirmed to before me on this 11 day of January 1999 A.D.

/S/ Tammy Polk Herrera

SEAL

NOTARY PUBLIC STATE OF TEXAS
TAMMY POLK HERRERA
Notary Public, State of Texas
My Commission Expires 9-29-2002

Constitutional Flag of the several and united States of America

IN THE FIFTH CIRCUIT ARTICLE III COURT OF APPEALS

OF THE UNITED STATES OF AMERICA

Appeal at Law No. 99-10210

Kurt Garrison Plaintiff-Appellant	)
v.	) MOTION TO RECUSE) CAROLYN DINEEN KING,
City of Wichita Falls, respondent	) CHIEF JUDGE
Chief of Police, Jack Schlieper in official capacity and as Jack Schlieper, defendant	)
Policeman David Bynum in official capacity and as David Bynum, defendant	)
Appellees	)

MOTION TO RECUSE CAROLYN DINEEN KING, CHIEF JUDGE

Comes now, Kurt Garrison, moving the Appellate Court under Federal Rule of Appellate Procedure 27; 28 USC § 455(a); and the Due Process Clause of the Fifth Amendment of the National Constitution to recuse Chief Judge Carolyn Dineen King for cause from instant case if assigned thereto.

On June 21, 1999 Garrison sent "Complaints for Impeachment" to Honorable Henry Hyde of the U.S. House of Representatives, chairman of the judiciary committee against Circuit Judges Rhesa H. Barksdale and Emilio M. Garza for conspiracy to commit treason and other crimes. And District Judges Edward C. Prado and Joe Kendall for treason to the National Constitution and other crimes. All complaints for impeachment arose under acts of the before named judges in Garrison v City of Grey Forest, et al, Fifth Circuit case no. 98-50469 and instant case in the District Court. A copy of the complaints for impeachment were also filed with the Fifth Circuit Chief Judge Carolyn

Dineen King for disciplinary action (see Judicial Misconduct Complaints 99-05-372-0171 through 0174).

Chief Judge King dismissed the Judicial Misconduct complaints by making triviality of the facts, omitting relevant material facts, and refusing to recognize Garrison's rights guaranteed under the National Constitution. On August 20th, 1999, Garrison filed a Petition for Review by the Judicial Council of the Fifth Circuit of Judge King's dismissal of Garrison's Complaints which is now pending. Judge King's order clearly shows to any reasonable person that she is biased and prejudiced against Garrison and that her act of dismissing the same disciplinary complaints is an extra-judicial act protecting the "brotherhood of judges" in the Fifth Circuit. Judge King's same dismissal clearly shows the impossibility of her presiding over instant case with impartiality which has at least one similar claim as Garrison v Grey Forest, et al, supra.

Title 28 § 45 (a) entitled Disqualification of Justice, Judge or Magistrate declares "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Both Texas and National Courts imposes a duty on Chief Judge King to recuse herself from Garrison's case for impartiality.

"If one of the judges is disqualified on this ground (impartiality), a judgement rendered will be void, even though the proper number may have concurred in the result, which includes the interested judge." January v State, 36 Tex. Cr. R. 488, 38 SW 179; Lee v Mortgage Co., 51 Tex. Civ App. 272, 115 SW 320

> "An accused has a right to an impartial judge regardless of the evidence against him, and may halt the trial by objections seasonably raised because of the disqualification of the judge." Tumey v. Ohio, 273 US 510 71 L Ed 749,

> "The due process clause of the Fifth Amendment entitles a person to an impartial and disinterested tribunal in both civil and criminal cases, ..." Marshal v Jerrico, Inc., 446 US 238, 100 S Ct 1610, 64 L Ed 2d 182

> "In view of the powerful and independent constitutional interest in fair adjudicative procedure embodied in the due process clause of the Fifth Amendment, justice must satisfy the appearance of justice, and such stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales

of justice equally between contending parties." Marshal v Jerrico, Inc., supra.

"Due process implies a tribunal both impartial and mentally competent to afford a hearing." Jordan v Massachusetts, 225 US 167, 32 S Ct 651, 56 L Ed 1038

Failure of Chief Judge King to recuse herself from Garrison's case shall provide a recognized cause of action subject to redress in a "Bivens" lawsuit.

"An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him. Tumey v Ohio, supra.

Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law. Re Murchinson, 349 US 133, 75 S Ct 623, 99 L Ed 942

From the foregoing, Chief Judge Carolyn Dineen King is barred under 28 USC § 455(a) and the Fifth Amendment of the National Constitution from presiding over instant case.

Respectfully signed this 8th day of September, the year of our Lord 1999 A.D.

/s/ Kurt Garrison
natural Texas State Citizen
P.O. Box 680603
San Antonio, Texas 78268-0603

U.S. COURT OF APPEALS
FILED
SEP 13 1999
CHARLES R. FULBRUGE III
CLERK

Constitutional Flag of the several and united States of America

IN THE FIFTH CIRCUIT ARTICLE III COURT OF APPEALS

OF THE UNITED STATES OF AMERICA

Appeal at Law No. 99-10210

Kurt Garrison Plaintiff-Appellant	)
v.	) MOTION TO RECUSE) RHEAS HAWKINS
City of Wichita Falls, respondent	) BARKSDALE,) CIRCUIT JUDGE
Chief of Police, Jack Schlieper in official capacity and as Jack Schlieper, defendant	)
Policeman David Bynum in official capacity and as David Bynum, defendant	)
Appellees	)

MOTION TO RECUSE RHESA HAWKINS BARKSDALE, CIRCUIT JUDGE

Comes now, Kurt Garrison, moving the Appellate Court under Federal Rule of Appellate Procedure 27; 28 USC § 455(a); and the Due Process Clause of the Fifth Amendment of the National Constitution to recuse Circuit Judge Rhesa H. Barksdale for cause from instant case if assigned thereto.

On June 21, 1999 Garrison sent a "Complaint for Impeachment" to the Honorable Henry Hyde of the U.S. House of Representatives, chairman of the judiciary committee against Circuit Judge Rhesa H. Barksdale for conspiracy to commit treason and other crimes. A copy of the same complaint for impeachment alleged criminal violations of 18 USC §§ 241, 242 against Fifth Circuit Judge Rhesa H. Barksdale and was sent to the U.S. Attorney for the Fifth Circuit as a criminal complaint. A copy of the complaint was also filed with the Fifth Circuit Chief Judge for disciplinary action (see Judicial Misconduct Complaints 99-05-372-0171 through 0174).

On August 11, 1999, Garrison wrote the clerk of the Fifth circuit

requesting the names of all judges entering rulings in instant case. On August 19, 1999, Garrison filed with the clerk of the Fifth a circuit a Revised Certificate of Interested Persons listing Circuit Judge Rhesa H. Barksdale as an interested Party. The clerk responded by letter dated August 24, 1999, stating that no action would be taken on the same Revised Certificate of Interested Persons without a motion to recuse. To date, the Appellate Court clerk has not provided Garrison with a list of judges presiding over instant case.

Title 28 § 45 (a) entitled Disqualification of Justice, Judge or Magistrate declares "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Judge Rhesa H. Barksdale is facing an impeachment inquiry, criminal charges and Judicial Misconduct Complaint under review all filed by Garrison. Both Texas and National Courts imposes a duty on Judge Rhesa H. Barksdale to recuse herself from Garrison's case for impartiality.

"If one of the judges is disqualified on this ground (impartiality), a judgement rendered will be void, even though the proper number may have concurred in the result, which includes the interested judge." January v State, 36 Tex. Cr. R. 488, 38 SW 179; Lee v Mortgage Co., 51 Tex. Civ App. 272, 115 SW 320

"An accused has a right to an impartial judge regardless of the evidence against him, and may halt the trial by objections seasonably raised because of the disqualification of the judge." Tumey v. Ohio, 273 US 510 71 L Ed 749,

"The due process clause of the Fifth Amendment entitles a person to an impartial and disinterested tribunal in both civil and criminal cases, ..." Marshal v Jerrico, Inc., 446 US 238, 100 S Ct 1610, 64 L Ed 2d 182

"In view of the powerful and independent constitutional interest in fair adjudicative procedure embodied in the due process clause of the Fifth Amendment, justice must satisfy the appearance of justice, and such stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." Marshal v Jerrico, Inc., supra.

"Due process implies a tribunal both impartial and mentally competent to afford a hearing." Jordan v Massachusetts, 225 US 167, 32 S Ct 651, 56 L Ed 1038

Failure of Judge Rhesa H. Barksdale to recuse herself from Garrison's case shall provide yet another cause of action subject to redress in a "Bivens" lawsuit.

"An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him. Tumey v Ohio, supra.

Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law. Re Murchinson, 349 US 133, 75 S Ct 623, 99 L Ed 942

From the foregoing, Fifth Circuit Judge Rhesa H. Barksdale is barred under 28 USC § 455(a) and the Fifth Amendment of the National Constitution from presiding over instant case.

Respectfully signed this 8th day of September, the year of our Lord 1999 A.D.

/s/ Kurt Garrison
natural Texas State Citizen
P.O. Box 680603
San Antonio, Texas 78268-0603

U.S. COURT OF APPEALS
FILED
SEP 13 1999
CHARLES R. FULBRUGE III
CLERK

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IN THE FIFTH CIRCUIT ARTICLE III COURT OF APPEALS

OF THE UNITED STATES OF AMERICA

Appeal at Law No. 99-10210

Kurt Garrison Plaintiff-Appellant v. City of Wichita Falls, respondent Chief of Police, Jack Schlieper in official capacity and as Jack Schlieper, defendant Policeman David Bynum in official capacity and as David Bynum, defendant Appellees	))) MOTION TO RECUSE) EMILIO M. GARZA,) CIRCUIT JUDGE)))))))

MOTION TO RECUSE EMILIO M. GARZA, CIRCUIT JUDGE

Comes now, Kurt Garrison, moving the Appellate Court under Federal Rule of Appellate Procedure 27; 28 USC § 455(a); and the Due Process Clause of the Fifth Amendment of the National Constitution to recuse Circuit Judge Emilio M. Garza for cause from instant case if assigned thereto.

On June 21, 1999 Garrison sent a "Complaint for Impeachment" to the Honorable Henry Hyde of the U.S. House of Representatives, chairman of the judiciary committee against Circuit Judge Emilio M. Garza for conspiracy to commit treason and other crimes. A copy of the same complaint for impeachment alleged criminal violations of 18 USC §§ 241, 242 against Fifth Circuit Judge E. M. Garza and was sent to the U.S. Attorney for the Fifth Circuit as a criminal complaint. A copy of the complaint was also filed with the Fifth Circuit Chief Judge for disciplinary action (see Judicial Misconduct Complaints 99-05-372-0171 through 0174).

On August 11, 1999, Garrison wrote the clerk of the Fifth circuit requesting the names of all judges entering rulings in instant case. On

August 19, 1999, Garrison filed with the clerk of the Fifth a circuit a Revised Certificate of Interested Persons listing Circuit Judge Emilio M. Garza as an interested Party. The clerk responded by letter dated August 24, 1999, stating that no action would be taken on the same Revised Certificate of Interested Persons without a motion to recuse. To date, the Appellate Court clerk has not provided Garrison with a list of judges presiding over instant case.

Title 28 § 45 (a) entitled Disqualification of Justice, Judge or Magistrate declares "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Judge E. M. Garza is facing an impeachment inquiry, criminal charges and Judicial Misconduct Complaint under review all filed by Garrison. Both Texas and National Courts imposes a duty on Judge E. M. Garza to recuse himself from Garrison's case for impartiality.

> "If one of the judges is disqualified on this ground (impartiality), a judgement rendered will be void, even though the proper number may have concurred in the result, which includes the interested judge." January v State, 36 Tex. Cr. R. 488, 38 SW 179; Lee v Mortgage Co., 51 Tex. Civ App. 272, 115 SW 320

> "An accused has a right to an impartial judge regardless of the evidence against him, and may halt the trial by objections seasonably raised because of the disqualification of the judge." Tumey v. Ohio, 273 US 510 71 L Ed 749,

> "The due process clause of the Fifth Amendment entitles a person to an impartial and disinterested tribunal in both civil and criminal cases, ..." Marshal v Jerrico, Inc., 446 US 238, 100 S Ct 1610, 64 L Ed 2d 182

> "In view of the powerful and independent constitutional interest in fair adjudicative procedure embodied in the due process clause of the Fifth Amendment, justice must satisfy the appearance of justice, and such stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." Marshal v Jerrico, Inc., supra.

> "Due process implies a tribunal both impartial and mentally competent to afford a hearing." Jordan v Massachusetts, 225 US

167, 32 S Ct 651, 56 L Ed 1038

Failure of Judge E. M. Garza to recuse himself from Garrison's case shall provide yet another cause of action subject to redress in a "Bivens" lawsuit.

> "An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him. Tumey v Ohio, supra.
>
> Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law. Re Murchinson, 349 US 133, 75 S Ct 623, 99 L Ed 942

From the foregoing, Fifth Circuit Judge E. M. Garza is barred under 28 USC § 455(a) and the Fifth Amendment of the National Constitution from presiding over instant case.

Respectfully signed this 8th day of September, the year of our Lord 1999 A.D.

/s/ Kurt Garrison
natural Texas State Citizen
P.O. Box 680603
San Antonio, Texas 78268-0603

U.S. COURT OF APPEALS
FILED
SEP 13 1999
CHARLES R. FULBRUGE III,
CLERK

CERTIFICATE OF SERVICE

I, Kurt Garrison, certify that true and correct copies of the forgoing Motion to Recuse Fifth Circuit Judge E. M. Garza; Motion to Recuse Fifth Circuit Judge Rhesa Hawkins Barksdale; and Motion to Recuse Fifth Circuit Chief Judge Carolyn Dineen King were delivered, via certified mail no. Z 462 571 805, to Mark Price, Assistant City Attorney for the City of Wichita Falls, P.O. Box 1431 Wichita Falls, Texas 76307 attorney for Appellees. /s/ Kurt Garrison